

AVOSETTA QUESTIONNAIRE

ENVIRONMENTAL LIABILITY DIRECTIVE

Ghent, 1-2 June 2007.

I. Can you give some concise information about your national environmental liability system?

- Are there special provisions on civil liability for environmental damage?
- Are there other (administrative type of) special provisions and procedures concerning the prevention and remedying of environmental damage? Do they have a general nature or are they only applicable in one or another environmental field (e.g. soil pollution) ?
- Is your country party to the international conventions listed in the annexes IV and V of Directive 2004/35/EC?

II. Implementation of Directive 2004/35/EC

General status of implementation:

- Has Directive 2004/35/EC already been fully implemented?
- If not, is it under way?
- Have deficiencies of the Directive been identified during national discussions ?

General approach of implementation:

- Has your country reduced the level of environmental protection as a consequence of the Directive ?
- Did your country opted for a comprehensive piece of legislation to transpose the Directive? A Separate Act or a new Chapter of a General Act?
- Did your country opted for amending several pieces of legislation?
- Did your country opted for a combination of these 2 approaches?
- Did your country opted for a mere transposition of the minimum requirements of the Directive or introduced stricter provisions?

2.3. Options taken during the transposition process (please focus on innovations in your country legislation with respect to the text of the Directive)

2.3.1. Definitions

- How is the definition of environmental damage implemented?
- Did your country included in the notion ‘protected species and natural habitats’ habitats or species, not listed in the Annexes of the Birds and Habitat Directives? (art. 2.3 (c))
- Is land damage protected just in case of significant risk of adverse effect on human health?
- When is the conservation status of a natural habitat taken as favourable?
- What about the definition of “operator”? Are persons ‘to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of the permit or authorization for such an activity or the person registering or notifying such an activity’ included? (art. 2.6)

2.3.2. Scope

- Did your country opted for a double system of liability (strict and fault based) or for a more stringent regime as allowed by art 3.2?

2.3.3. Exceptions

- Which are the exceptions to the scope of the liability regime in your country? (art 4)
- What about the permit defence and the state of the art defence (art. 8.4)?

2.3.4. Preventive and remedial actions

- When are preventive (art 5) and remedial (art 6) actions taken by the operator?
- Which is the role of the competent authority?
- Is there any way for environmental organisations to participate in the negotiations between the polluter and the administration on the restoration ? Are these discussions public ?
- Are there provisions to develop in further details the common framework concerning the remedying of environmental damage (Annex II)?

2.3.5. Preventive and remedial costs

- Is there a system of security over property or other appropriate guarantees (art. 8.2)? Is it a preventive system or shall such measures only be taken after environmental damage has occurred? How the system works?
- Is there a special provision to give effect to art. 8.3, *in fine* (appropriate measures to enable the operator to recover the costs incurred in cases the operator shall not be required to bear the cost of preventive or remedial

actions)? Must the operator in such cases nevertheless take the remedial measures? Or are they taken by the authorities ?

2.3.5. Cost allocation

- Are there national provisions within the meaning of article 9?

2.3.6. Competent authority

- Which authority or authorities were designated for the purposes of article 11?
- Which remedies are available when preventive or remedial measures are imposed? (art. 11.4)

2.3.7. Request for action

- Which of the alternatives listed in art. 12.1. were chosen ?
- Is article 12 only applied in cases of remediation of environmental damage or also in cases of imminent threat of damager ? (art. 12.5)
- What type of review procedure is available under national law ? (art. 13)

2.3.8. Financial security

- How was article 14 implemented?

2.3.9. National law

- Were additional activities included in the scope of the regime? Were additional responsible parties identified?(art. 16.1)
- Are there special provisions to prevent a double recovery of costs in cases of concurrent action ? (art. 16.2)

2.3.10. Temporal application

- How was article 17 implemented?

2.3.11. Transboundary environmental damage

- How the system works in case of environmental damage in a transboundary context ?